IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 223 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
KARSANDAS S HINDOCHA & . VINODRAI K HINDOCHA . - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following question for opinion of this Court under Section 256(1) of The Income Tax Act, 1961;

> “Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow carry forward of loss though the return was filed late ?”

In relation to the assessment year 1984-85, the assessee had filed the return late and claimed that he be allowed to carry forward the loss. The Assessing Officer rejected the submission and the matter ultimately went to the Tribunal. The Tribunal, on the facts, found that the Return was filed within the time allotted under Section 139(4) of the I.T. Act. On these premises the Tribunal held in favour of the assessee.

2. At the instance of the Revenue, a Reference was made to this Court which was registered as ITR No. 181 of 1995. A Division Bench of this Court, vide its Judgment dated 15.6.2006, answered the question against the interests of the Revenue.

3. Learned counsel for the Revenue submits that, in the said case, an application for extension was made, the application was rejected, but the order was not communicated to the assessee, therefore, the Tribunal, so also this Court, held that in absence of a valid communication no order could be drawn against the interests of the assessee.

4. When we made an enquiry from the learned counsel for the Revenue that whether in this case any application for extension was made or not, the learned counsel submitted that in the present case an application was made but it is not known to anybody whether the application was granted or rejected and the final decision on the application was communicated or not to the assessee. He submits that the facts of the present case are distinguishable from the facts of I.T.R. No. 181 of 1995.

5. In our opinion, the facts, as projected in the present Reference, make the case worse for the Department in comparison to the facts of the I.T.R. No. 181 of 1995. In the said matter, non-communication of the order adverse to the interest of the assessee was taken to be bad on the part of

the Revenue, but, in the present case, even the Revenue does not know that such application was disposed of or not.

6. From Paragraph 3 of the order passed by the C.I.T. (Appeals), it would clearly appear that the Revenue was placing its strong reliance on provisions of Section 80 of the Income Tax Act, 1961, but the Tribunal held that the provisions came in effect from 1.4.1985. The Tribunal also observed that in the case on hands the Return has been filed within the time allowed under Section 139(4) and loss has also been computed. If that be so, and it is held that the Return was filed in time, then the Revenue would not be allowed to raise any question on the fact that the Return was filed late. Under the circumstances, we must hold that the Tribunal was right and justified in directing the Assessing Officer to allow carry forward of loss. The question is answered against the interests of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.